

[Advisory Opinion 1998-5]

MONTGOMERY COUNTY ETHICS COMMISSION

ADVISORY OPINION

May 11, 1998

The Ethics Commission reviewed a letter from a former employee requesting a waiver, if necessary, to accept employment with the Columbia Telecommunication Corporation (CTC).

The requestor indicated the following pertinent facts:

1. During his former employment with Montgomery County, the requestor significantly participated in the selection of CTC to provide cable television consulting engineering services to Montgomery County, and in the negotiation and administration of the ensuing contract with CTC.
2. During that same period, CTC also provided services to the Montgomery County Department of Transportation and the Department of Information Services and Telecommunications under other contracts in which the requestor had no involvement of any kind.
3. In October 1997, CTC offered the requestor employment to provide technical and administrative support to Montgomery County's Tower Committee, a group established after the requestor left county service. That employment would not require that the requestor provide any services in connection with the engineering consulting services contract in which he had significantly participated as a county employee.

After a review of Ethics Law restrictions on the employment of former county employees by county contractors, and, applying those restrictions to the facts as set forth in the requestor's original letter, the Commission advised that:

Although he had official responsibility on behalf of Montgomery County for the CTC contract, §19A-13's 1-Year Total Ban on any employment of him by CTC had expired because it had been more than one year since he left the employ of Montgomery County, Maryland. However, the 10- Year Partial Ban continued to apply to him. In particular, the requestor is prohibited from accepting employment with CTC in connection with its performance of the cable TV engineering consulting services contract, and that prohibition will continue for a period of ten years from the date he left county service.

Based on the requestor's representation that he will not be employed to assist CTC in the performance of that contract, the Commission concluded that his proposed employment by CTC is not prohibited by the Montgomery County

Ethics Law, and therefore, no waiver is required. Were it otherwise with respect to either the current contract or a new contract to provide such services, the prohibition would apply, a waiver would be necessary, and, on the facts submitted, the Commission would not grant a waiver. Although it determined that the Ethics Law did not prohibit the proposed employment, the Commission cautioned that, in its opinion, the ten year ban with respect to the engineering consulting services contract applies to any and all forms of assistance, including, but not limited to, assisting in the preparation of any claim under or extension of the current contract and any bid or proposal on a new engineering consulting services contract with Montgomery County. The requestor was advised that he may not, during the 10-year period, perform any service, directly or indirectly, for CTC in connection with that contract or any successor contract. He also may not, in the opinion of the Commission, disclose to CTC any confidential information concerning a county agency that he acquired as a county employee or otherwise use confidential information acquired as a county employee for his personal gain or that of another.

(Montgomery County Code, §19A-15.)

After receiving and reviewing the Commission's advice and accepting employment with CTC, the requestor informed the Commission in a March 25, 1998 letter, that in 1992, on the advice of the County's Office of Procurement, all of the consulting contracts between CTC and various County agencies, including the cable TV engineering consulting services contract that he administered as a county employee, were combined into one contract between CTC and the Cable Office that he formerly managed as a county employee. Consequently, he requested that the Commission waive the 10-year ban of §19A-13(a) because it would be impossible for him to perform any CTC work for the County without providing those services under the consulting engineering service contract administered by the Cable Office.

§19 A-S(c) of the Ethics Law authorizes the Commission" after receiving a written request, to waive the 10-year ban imposed by §19A-13(a) if the Commission finds that:

- (1) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or
- (2) the proposed employment is not likely to create an actual conflict of interest.

When it grants a waiver, the Commission may impose appropriate conditions to fulfill the purposes of the Ethics Law. §19A-8(e).

Having reviewed the matter in light of the facts presented in his letter of March 25, 1998, the Commission determined that the facts presented by the requestor did not meet the requirements for a waiver under §19A-13(b). Therefore, his request for a waiver was denied